

**MINUTES**  
**STATE COMMISSION ON THE EFFICACY OF CON**  
Sanders Fireplace Room at the Capitol Education Center  
180 Central Avenue, Atlanta, Georgia

June 27, 2005; 1:00 pm

**Daniel W. Rahn, MD, Chair, Presiding**

**MEMBERS PRESENT**

Jeff Anderson  
Senator Don Balfour  
Tim Burgess  
Donna Johnson, Esq.  
Ronnie Rollins  
Representative Austin Scott  
Dan Maddock  
Melvin Deese, MD  
Joseph “Rusty” Ross, Esq.

**GUESTS PRESENT**

Governor Sonny Perdue  
Jill Fike, Senate Research Office  
Julie Windom, Ga. Alliance Community Hospitals  
T. Chambliss, Ga. Alliance Community Hospitals  
Taffey Bisbee, Mitretek Healthcare  
Monty Veazey, Ga. Alliance Community Hospitals  
Rob Willis, Troutman Sanders PAC  
Sheila Humbersham, Troutman Sanders PAC  
Vivien Gallagher, Piedmont Bank of Georgia  
John Parker, Esq., Ga. Alliance Community Hospitals  
Charles Gregory, Arnall Golden Gregory  
Deb Bailey, Northeast Georgia Health System  
Lisa Norris, The Strategy House  
Scott Maxwell, Mathews & Maxwell, Inc.  
Victor Moldovan, Phears & Moldovan  
B. Moore, McKenna, Long & Aldridge  
B. Vinson, McKenna, Long & Aldridge  
David Henderson, University Hospital  
Susan Meyers, Georgia House Speaker  
Bill Lewis, Lewis Consulting  
Helen Sloat, Nelson Mullins  
Doug Holbrook, St. Joseph’s Hospital System

**MEMBERS ABSENT**

Robert Lipson, MD

**STAFF PRESENT**

Kimberly Anderson  
Neal Childers, JD  
Charemon Grant, JD  
Richard Greene, JD  
Matt Jarrard  
Laura Jones  
Victoria Kizito, JD  
Robert Rozier, JD  
Rhathelia Stroud, JD

Kim Menefee, Wellstar Health System  
Sharon Dougherty, DHR/Off. Regulatory Services  
Becky Ryles, Omni  
Sharon Cooper, Georgia House of Representatives  
Bryan Fiveash, Fiveash-Stanley, Inc.  
Holly Snow, Georgia Hospital Association  
Clay Huckabee, JTA  
Travis Dwozen, Resurgens  
Kevin Rowley, St. Francis Hospital  
Dodie Putman, Hospital Corporation of America  
Webb Cochran, Tenet Healthcare  
Billy Baron, Georgia Healthcare Assoc.  
Don Fears, DeKalb Regional Health System  
Brian Looby, Medical Assoc. of Georgia  
Larry Lloyd, Innovative Consultants  
Tarry Hodges, St. Joseph's/Candler Health System  
Linda Womack, Emory University  
C. Hayslett, Ga. Alliance Community Hospitals  
Kelly McMunther, GPPF  
Jimmy Lewis, Hometown Health, LLC  
Marge Coggins, HBO  
Tashena Gasaway, Sullivan Consulting Group  
Liz Sizemore, Piedmont Bank  
Blaine Wossy, Emory Univ./Schl of Law  
Erin Moriarty, Atlanta Business Chronicle  
Dan Williams, Dekalb Medical Center  
Stan Jones, Nelson Mullins  
Jeff Baxter, Nelson Mullins  
Marsha Burke, Wellstar Health System  
Leah Watkins, Powell Goldstein  
Melani Stockwell, President Pro Tem Office  
Joe Tanner, JTA  
Ellen Williams, WCG  
Jerry Usry, Phoebe Putney Health System  
Joy Davis, Rockdale Medical Center  
Heather McLinerney, Ga. Nursing Home Assoc.  
Rick Ivey, AMC

## **WELCOME AND OPENING REMARKS**

Dr. Rahn called the first meeting of the State Commission on the Efficacy of Certificate of Need Program (Commission) to order at 1:05 pm. He welcomed all members and guests and noted that Robert Lipson, MD would be absent from today's meeting.

Following the welcome Dr. Rahn provided opening remarks to the Commission. He said that the overarching goal of the Commission is to ensure access to high quality healthcare at an affordable cost to Georgia citizens. He further said that one of the goals of the Commission is to examine how Georgia's Certificate of Need Program fails or succeeds in reaching this goal. Dr. Rahn encouraged members to leave their individual biases out of the deliberation process and to be open-minded as the Commission proceeds with its work.

Following the opening remarks, Commission members and staff briefly introduced themselves.

## **CHARGE TO COMMISSION**

Dr. Rahn reviewed the statutory responsibilities of the Commission and read an abstract which outlined those responsibilities as follows:

### **Responsibilities of the Commission**

Conduct a comprehensive review of the Certificate of Need program which shall include, but not be limited to:

The effectiveness of the program in accomplishing its original policy objectives,

The costs associated with the program, and

The impact on health care and costs of continuing or discontinuing the program.

To determine if changes to the program are needed in order to achieve its policy objectives including:

A determination as to whether services currently not subject to regulation should be regulated;

Whether services currently subject to regulation should no longer be regulated; and

Whether the current statutory appeals procedure properly balances the competing goals of good decision making and timeliness, as well as

Whether the appeals procedure is subject to abuse.

### **Duties of the Commission:**

To study and evaluate the effectiveness and efficiency of Georgia's Certificate of Need program;

To undertake a comprehensive review of the Certificate of Need program which shall include:

The effectiveness of the program in accomplishing its original policy objectives,

The costs associated with the program,

The benefits of continuing or discontinuing the program,

The financial impact of continuing or discontinuing the program,

- The impact on the quality, availability, and cost of health care if the program is continued or discontinued;
- To evaluate and consider the experiences and results in other states which utilize Certificate of Need programs;
- To evaluate and consider the experiences and results in other states which have abolished Certificate of Need programs;
- To identify findings and conclusions, including but not limited to recommendations as to whether the Certificate of Need program should be continued, discontinued, or modified;
- To evaluate the impact of continuing or discontinuing the Certificate of Need on providing patient care in trauma care hospitals, critical access hospitals, and public hospitals;
- To evaluate the impact of continuing or discontinuing the Certificate of Need program on providing service to Medicaid and indigent patients; and
- To make recommendations for proposed legislation.

## **CHARGE TO THE COMMISSION**

Dr. Rahn welcomed Governor Sonny Perdue to the meeting. Governor Perdue, in his address to the Commission, thanked members for their willingness to serve on the Commission. He said that Certificate of Need (CON) is a very complex issue and suggested that the Commission examine the need for a transition from a regulatory model to a competitive model for healthcare planning in the state. He said that the composition of the Commission was designed to provide some balance to the process. He encouraged members to utilize their individual expertise during the meeting deliberations but cautioned about advocating for their respective industries. Governor Perdue emphasized that decisions should be made that are in the best interest of the citizens of the state.

## **DISCUSSION OF COMMISSION'S SCOPE OF WORK**

Dr. Rahn indicated that Department staff through the Division of Health Planning would support the Commission's work. He said that no funds were specifically appropriated by the House of Representatives or the Senate but nevertheless, the Commission has the ability to accept public or private grants and bequests. Members engaged in discussion of the role of funding to support the Commission's work. They emphasized the need to ensure that there is full disclosure regarding all funding sources and indicated that all funds received by the Commission should be classified as unrestricted. Members further agreed that the Commission's work should represent a 20-year planning horizon so that another Commission or planning body would not be needed in the near future to deliberate this same issue.

In an attempt to provide a planning framework for the Commission, Dr. Rahn outlined some parameters for the Commission's work. He said that the Commission might want to examine the following issues:

- What is the original purpose of the CON legislation?
  - o Does the current CON process accomplish policy objectives?

- What are the outcome measures?
- What are the experiences of those states that have deregulated?
  - What lessons can be learned?
- How is the CON program in Georgia administered?
- Nationwide, which services are regulated?
  - How does Georgia compare?
  - Which states have better processes?
    - Which processes could be implemented in Georgia?
- What are the successes/failures of the CON program in Georgia?
- What are the costs associated with the operation of the CON program in Georgia?
- What are the implications of making changes to the CON program?
  - A wide spectrum of options- increasing the amount of regulations; complete deregulation or some or some middle ground
  - What is the impact on safety net providers?

Tim Burgess reminded members that the Department has the discretion to make changes to some Rules and regulations but noted that there are some areas which are statutorily based. He said that the Governor and the Georgia General Assembly are the only persons with the authority to make changes to the state statute.

Dr. Rahn suggested the need to engage external consultative support throughout the planning process given the nature of the research and the broad purview of the Commission. In addition to consulting support, members recommended the use of some additional resources including: The National Council of State Legislature (NCSL), Georgia's House of Representatives and Senate Research staff, Georgia Institute of Technology, University of Georgia, Georgia State University, Emory University and Medical Legislative Exchanges Council.

Dr. Rahn introduced Rhathelia Stroud, JD, Director of the CON Program in the Department of Community Health/Office of General Counsel. Ms. Stroud provided an overview of the statutes and the regulations that are employed in the day-to-day administration of the CON program. She said that the Health Strategies Council, through the establishment of technical advisory committees, provides guidance during the development of the CON service-specific Rules.

Ms. Stroud said that the Department is cognizant of the arguments for and against CON namely that it supports "quality of care" versus "economic" model and conversely that it is anti-competition. Ms. Stroud reminded Commission members that some of the Rules that govern the CON decision-making process are statutory while others are based on service-specific Rules. She said that the Department embraces the work of the Commission and its charge to evaluate the efficacy of the current program and welcomes the Commission's recommendations regarding whether the current program still works, or whether another regulatory model is needed to meet the evolving healthcare needs in Georgia.

During the discussion of the Commission's scope of work, some members indicated that billing practices to the uninsured should be closely examined. Also, other members asked for clarification of the issue surrounding designation of general surgery as a multi-specialty service and for clarity surrounding the distinction between a "statute" and a "Rule".

Dr. Rahn clarified the distinction that exists between a “statute” and a “Rule”. He said that the statute, set forth in O.C.G.A. 31-6-1-70 and included in today’s meeting materials, outlines the state policy with regard to the development of statewide services. He read a portion of the statute, which states specifically that:

*“the policy of this state and the purpose of this chapter are to ensure that adequate health care services and facilities are developed in an orderly and economical manner and are made available to all citizens and that only those health care services found to be in the public interest shall be provided in this state. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that a system of mandatory review of new institutional health services be provided. Health care services and facilities should be provided in a manner that avoids unnecessary duplication of services, that is cost-effective, and that is compatible with the health care needs of the various areas and populations of the state”.*

He further clarified that the “Rule” making process is the development of policies and procedures, established by the Department and the Health Strategies Council, including the development of technical advisory committees to carry out the Department’s statutory responsibilities. At present, there are sixteen (16) service-specific Rules that are administered by the DCH/Office of General Counsel.

Representative Scott inquired whether the classification of general surgery as a multi-specialty service is statutory or whether it is a Rule. Mr. Childers clarified that an earlier rule, established by the State Health Planning Agency, established general surgery as a multi-specialty service. He said that the General Assembly adopted the definition for Single Specialty Ambulatory Surgical Services in 1991 based on this prevailing definition. He said though it is not in the plain language of the statute, the General Assembly in effect adopted the definition of general surgery as a multi-specialty services during this process.

Additional conversation centered on those states with and without CON and the regulatory mechanisms, if any, that are being used by those states without CON. Members requested information on how quality of care is ensured in states without CON.

Some members noted that in Georgia, several hospitals have restructured so that they could circumvent the Rules and regulations of the Hospital Authority’s Act. It was suggested that the Hospital Authority Act should be discussed in greater detail.

Dr. Deese indicated that CON was established during the 1970’s when reimbursement was based on a cost-based system. He said that CON was never structured to provide a standard for quality of care, instead quality was considered in the licensing process. He restated that the cost-based system for paying for healthcare in the 70s & early 80s no longer exist, which justifies the need to reexamine and change the current CON system.

Mr. Rozier, in response to Dr. Deese’s statement about the relationship between CON and quality clarified that there are many services that are covered by the Department, under CON but which are not regulated by the Department of Human Resources. He said that the Department regulates the quality of those services, including Magnetic Resonance Imaging, Comprehensive

Inpatient Physical Rehabilitation Services and other hospital-based services, among others. Licensure, through the Department of Human Resources, does not regulate these services. He noted that once a hospital is licensed the Department of Human Resources does not regulate the quality of individual services but regulates the hospital as a whole. He further clarified that once a CON is issued the Department does not perform physical inspections of facilities to ensure quality standards, however in order for an existing provider to expand some services or in order for a new provider to offer some specific services they must prove to the Department that they will meet quality standards outlined in the Department's service-specific Rules.

Dr. Rahn summarized the role of the Commission noting that the Commission's goal is to ensure access to the highest quality of healthcare services at the lowest cost to the most people.

Victoria Kizito said that, as outlined by statute, CON was established in Georgia to ensure adequate healthcare services and facilities. She said that with regards to quality, "adequate" is the word that is used in statute though the concept of "highest quality" could be found in parts of the statute. She said that the word "adequate" is balanced with other considerations in the policy, for example, compatibility with the healthcare needs of the various areas and population of this state.

## **DETERMINATION OF WORK PROCESS**

Following some additional committee discussion, Dr. Rahn inquired as to the type of data that members would like to review in order to inform the decision-making process. Members listed the following issues:

- What is the burden of administering the CON program?
  - Number of lawsuits, including dollar amount, relating to CON program, including the Appeals process for the most recent 3-5 years (Calendar years ending December 31, 2004 going back three years).
  - What costs does the Department incur in the administration of this program?
  - What are the costs associated with preparing applications?
- Has the CON program held down the cost of healthcare in general in GA?
- How does our healthcare cost compare to other states with either more restricted or less restricted CON programs?
  - Examine the cost associated with the full spectrum of both acute and long term care services
  - Determine risk adjusted or population adjusted comparison with states that are not in a regulated environment.
- Examine Urban/Rural Healthcare Delivery Systems
- Examination of financial picture of hospitals and healthcare facilities (including a review of balance sheets and income statements—need an accurate picture)
- "Medical necessity"
  - Is there an increasing number of tests being performed as a mechanism to compensate for lost revenue?
- Cross subsidizing of healthcare.
  - Disparity reimbursement (hospital versus non-hospital based services).

- Analysis of the CON litigation
  - Who are filing lawsuits against the Department?
  - How many times has each litigant filed? What are the issues?
- Non-CON Related Lawsuits against the Department

Dr. Rahn said that the Commission would like to have an accurate picture of the financial health of Georgia's healthcare infrastructure. Members discussed the issues of "charges" and "cost. Members agreed that charges have no relationship to the cost of rendering services. Members also discussed the need for clarity and consistency while using such terms as "indigent" care since there is no universal definition of this term. Tim Burgess reminded members that the Department has defined some of these terms in the administration of the Indigent Care Trust Fund. He recommended the use of some of this existing information.

During committee member discussion there were questions raised about what mechanism, if any, could be used to determine whether providers are abusing the Certificate of Need program to thwart competition. Additional questions were raised about the discretion of the Department in the decision-making process to approve or deny a CON decision. Ms. Stroud clarified that while the Department has some discretion, the service-specific Rules and the statute guide the decision-making process.

Members inquired about the Department's authority to revoke a CON if a provider does not perform the number of projected procedures outlined in a CON application? Mr. Rozier clarified that the statute outlines the instances where the Department could revoke a CON. He said that not performing the projected number of procedures is not one of the reasons when a CON could be revoked.

Dr. Deese said that the current statute indicates that healthcare services should be provided in a manner that avoids unnecessary duplication of services. He said that this standard is outdated, given managed care considerations.

Members requested data on trends in the area of neonatology, trauma services, emergency services or any restrictions on services, including any contractions of services that have occurred regionally within the state.

Members also requested that a wide range of stakeholders (including but not limited to the Georgia Hospital Association, Medical Association of Georgia, Specialty Societies, Nursing Home Association and other CON-regulated providers) be invited to present before the Commission so that a wide range of information could be considered in the deliberation process.

There was some discussion of the need to establish committees within the Commission in order to complete the committee's work. A Legal Committee was specifically mentioned, though membership was not specifically discussed or determined at the meeting.

## **PUBLIC COMMENTS**

No one indicated the desire to address the Commission.



## **PROPOSED MEETING SCHEDULE**

Commission members agreed that given the extensive amount of research that is necessary to inform the planning and development process that meetings should be held on a monthly basis for the next six months. Further, the upcoming meeting should include a panel of stakeholders from the CON regulated industry.

The next two upcoming meetings were planned for August 8<sup>th</sup> and September 13<sup>th</sup> respectively. Members agreed that both meetings should be held in Atlanta. It was recommended that future meetings be held around the state to ensure a wide range of input from all stakeholders.

## **OTHER BUSINESS AND ADJOURNMENT**

Dr. Rahn suggested the election of a Vice Chair for the Commission and recommended Jeff Anderson for this role. Commission members accepted Dr. Rahn's recommendations.

There being no further business, the meeting adjourned at 4:00 pm.

Minutes taken on behalf of Chair by Stephanie Taylor.

Respectfully Submitted,

Daniel W. Rahn, MD, Chair